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Fissile Material Cut-off Treaty: History and Status

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October 2010

[This product is the result of collaboration between the Defense Threat Reduction Agency's Office of Strategic Research and Dialogues and James Martin Center for Nonproliferation Studies]

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Report Number OSRD 2011 030**

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Report Number OSRD 2011 030**

The mission of the Defense Threat Reduction Agency (DTRA) is to safeguard America and its allies from weapons of mass destruction (chemical, biological, radiological, nuclear, and high explosives) by providing capabilities to reduce, eliminate, and counter the threat, and mitigate its effects.

The Office of Strategic Research and Dialogues (OSRD) supports this mission by providing long-term rolling horizon perspectives to help DTRA leadership identify, plan, and persuasively communicate what is needed in the near term to achieve the longer-term goals inherent in the agency's mission.

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Fissile Material Cut-off Treaty: History and Status

An Overview

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October 2010



**Defense Threat Reduction Agency
Advanced Systems and Concepts Office**

**Contract HDTRA1-10-C-0101
Report Number ASCO 20XXXX**

2011 030

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The Advanced Systems and Concepts Office (ASCO) supports this mission by providing long-term rolling horizon perspectives to help DTRA leadership identify, plan, and persuasively communicate what is needed in the near term to achieve the longer-term goals inherent in the agency's mission. ASCO also emphasizes the identification, integration, and further development of leading strategic thinking and analysis on the most intractable problems related to combating weapons of mass destruction.

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Background

A treaty banning the production of fissile material for weapons purposes is one of the longest-standing items on the international disarmament and nonproliferation agenda. Indeed, the 1946 Baruch Plan contained a proposal that an International Atomic Development Authority “should exercise complete managerial control of the production of fissionable materials in dangerous quantities and must own and control the product of these [production] plants.”¹

The Baruch plan was never accepted, but throughout the 1960s, a ban on producing fissile material for weapons purposes was among the issues discussed at the United Nations. The Conference of the Eighteen Nation Disarmament Committee, which met between 1962 and 1969, was in particular the site of early discussions of a fissile material cut-off initiated by the United States. In April 1962, the U.S. delegation tabled a draft treaty outline that divided the disarmament process into stages; in Stage I, it was suggested that a nuclear arms race “would be halted through a cut-off in the production of fissionable material for use in nuclear weapons.”² United Kingdom also addressed the issue and submitted a paper entitled, “The Technical Possibility of International Control of Fissile Material Production,” for the Conference’s consideration in 1962.³ The advent of the Non-Proliferation Treaty (NPT), which opened for signature in 1968 and entered into force in 1970, somewhat alleviated the urgency of banning the production of fissile material for nuclear weapons. For the non-weapons states, the obligations under the NPT already contained the commitment not to produce material for weapons purposes. Today, therefore, the issue of banning the production of fissile material for nuclear weapons is pertinent for states outside the NPT and nuclear-weapon states recognized by the NPT (China, France, Russia, the United Kingdom, and the United States).. In the 1970s, the need for a fissile material production ban was reflected in the final document adopted by the First UN Special Session on Disarmament (SSOD I), where paragraph 50 reads:

The achievement of nuclear disarmament will require urgent negotiation of agreements at appropriate stages and with adequate measures of verification satisfactory to the States concerned for: ... (b) Cessation of the production of all types of nuclear weapons and their means of delivery, and of the production of fissionable material for weapons purposes.⁴

Proposed measures and treaties did not materialize during the Cold War, but the idea of a ban on producing fissile material for nuclear weapons became a disarmament mainstay.

In the 1990s, with the change of international climate and security environment, and a growing need to deal with NPT outsiders, the issue received renewed attention. In 1991, as part of his Middle East Peace Initiative, U.S. President George H. W. Bush proposed a regional ban on the production of

¹ Bernard Baruch, The Baruch Plan presented to the United Nations Atomic Energy Commission, June 14, 1946, available at <http://www.atomicarchive.com/Docs/Deterrence/BaruchPlan.shtml>. The Baruch Plan built upon the Acheson-Lilienthal report.

² Statement of the U.S. representative at the 151st meeting of the Eighteen Nation Disarmament Committee, 14 August 1963. Draft treaty outline is contained in document ENDC/30.

³ The paper is contained in the Committee document ENDC/60.

⁴ First Special Session of the General Assembly devoted to Disarmament (1978) - Final document of SSOD-I: Resolution and Decisions of the Tenth Special Session of the GA, A/S-10/4, Paragraph 50, available at <http://www.un.org/disarmament/HomePage/SSOD/ssod4-documents.shtml>.

material for nuclear weapons, which effectively meant limiting Israel, the only weapons possessor in the region. In 1993, speaking at the UN General Assembly (UNGA), U.S. President Bill Clinton called for the conclusion of a multilateral legal instrument to ban the production of fissile material for nuclear weapons. Subsequently, in December 1993, UNGA adopted by consensus Resolution 48/75L, which in its operative paragraph 1 “recommends the negotiation in the most appropriate international forum of a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices.”⁵ This formulation, “non-discriminatory, multilateral and internationally and effectively verifiable,” is now standard in references to the future fissile material treaty.⁶

The promise of a treaty banning the production of nuclear material for weapons was one of the considerations contributing to the indefinite extension of the NPT in 1995 and was also indirectly aimed at addressing the problem of NPT outsiders at the time, i.e. India, Israel and Pakistan, which would have been included in a global production ban.⁷ The Conference on Disarmament in Geneva, as the only multilateral disarmament negotiating forum, took up the issue, and in 1995, Ambassador Gerald Shannon (Canada), having consulted other member states, tabled a report that contained what became known as the Shannon Mandate. According to the report (CD/1299), the CD “decides to establish an ad hoc committee on a ‘ban on the production of fissile material for nuclear weapons or other explosive devices.’”⁸ The Mandate did not make any specific linkages to other issues on the CD agenda and left open the issue of existing military stocks of fissile material, suggesting that member states could raise this question in the course of deliberations of the ad hoc committee.

In spite of the adoption of the Shannon Mandate, negotiations on a fissile material treaty never commenced, blocked, variably, by Russia and China, the United States, Pakistan, and other countries. According to the CD procedures, a program of work establishing appropriate committees should be adopted every session by consensus. Until 1998, some states insisted that FMCT negotiations should proceed in parallel with discussions on nuclear disarmament, while China explicitly linked FMCT to the issue of preventing an arms race in outer space. Consensus was achieved in summer 1998, after the United States exerted much pressure on Israel not to obstruct an agreement, but the Ad Hoc Committee did not accomplish very much before the end of the session. The most recent breakthrough at the CD was achieved in May 2009, when for the first time in a decade, the Conference was able to adopt a program of work. The Conference decided to establish a Working Group to negotiate a fissile material treaty on the basis of Shannon Mandate,⁹ but negotiations did not begin. The CD was once again unable to adopt a program of work for the 2010 session primarily due to Pakistan’s objections. Current positions and views of the key states concerning FMCT are outlined further in this memo.

⁵ United Nations General Assembly Resolution 48/75L, “Prohibition of the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices,” 16 December 1993.

⁶ The U.S. position during the administration of George W. Bush, which departed from this formulation, is discussed below.

⁷ North Korea would effectively join this group of outsiders in 2002, when it withdrew from the NPT. See discussion of North Korea’s special status, below.

⁸ Report of Ambassador Gerald E. Shannon of Canada on Consultations on the Most Appropriate Arrangement to Negotiate a Treaty Banning the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices, CD/1299, 24 March 1995.

⁹ Decision for the Establishment of a Programme of Work for the 2009 session, CD/1864, 29 May 2009.

Points of Disagreement

Stocks

One of the major points of disagreement among states is the scope of the future treaty – that is, whether or not it should cover existing stocks of fissile material for weapons purposes and mandate their destruction.¹⁰ In early proposals and statements on the fissile material ban, the United States indicated that it should, eventually, include the destruction or conversion of existent stocks, but currently, none of the NPT nuclear-weapon states, supports the inclusion of existing fissile material in the treaty, nor does Israel or India. Non-nuclear-weapon states, however, particularly Non-Aligned states party to the NPT,¹¹ argue that a treaty banning only future production is a nonproliferation, rather than disarmament, measure and consider it essential that the issue of existing stocks be addressed in the negotiations of the treaty. Therefore, some states refer to an FMCT (cut-off treaty), and others to an FMT (fissile material treaty), and the nongovernmental International Panel on Fissile Materials (IPFM) calls it FM[C]T. (“FMCT” will be used here, with the understanding that negotiations on the treaty may lead to a more comprehensive FMT.) Since all the non-nuclear-weapon state parties to the NPT are already committed not to produce fissile material for weapons purposes, one may argue that their involvement is not essential. A recent development in this regard is also the belief among some states that FMCT is no longer a priority and may, indeed, be a distraction from the more important issue of complete nuclear disarmament.

Verification

In 2004, breaking from a long-standing U.S. position, the George W. Bush administration took the stance that an FMCT cannot be made effectively verifiable and therefore it did not support the commencement of negotiations that would include verification. In 2006, the United States tabled a draft treaty that did not cover verification; it was widely perceived as contrary to common understandings and expectations regarding an FMCT (i.e., the Shannon and UNGA mandates). The United States subsequently reversed this position, and the Obama administration supports a verifiable treaty. A majority of states seem to agree that the International Atomic Energy Agency (IAEA) has the necessary expertise and would be a logical choice for the treaty verification body, as reflected in the UNGA resolution.

¹⁰ At present, the five nuclear weapon states recognized by the NPT, as well as India, Pakistan, Israel, and North Korea possess fissile materials used for nuclear weapons. The United States, the UK, France, and Russia have ceased production of new fissile material for weapons, and China is believed also to have ceased production, but has not declared this publicly. India, Pakistan, and, presumably, Israel, are continuing to produce new fissile material for nuclear weapons, while North Korea's precise activities are not known; it has apparently ceased production of plutonium for nuclear weapons, but may be pursuing a secret program for enriching uranium to weapon-grade. Iran is not producing fissile material and has no stocks of such material, but has demonstrated the capacity to do so.

¹¹ Non-Aligned Movement (NAM) is the second largest grouping of countries (after the G-77) in the world. Founded in 1961, it currently has 118 members, 116 of which are non-nuclear-weapon States party to the NPT. The other two are India and Pakistan. North Korea (included in the 116), whose status under the NPT is still disputed, is also a NAM member. Several states prominent in the nuclear disarmament and nonproliferation field, such as Brazil and Mexico, are NAM observers.

Taking the negotiations out of the CD

Due to the inability to break the deadlock at the CD, and citing the examples of the Cluster Munitions Convention and the Anti-Personnel Landmine Ban, states such as Norway and Canada have proposed taking FMCT negotiations out of the CD. Norway announced this proposal at the 2009 NPT Preparatory Committee (PrepCom) and again at the 2010 Review Conference. In the words of a Canadian representative at the 2010 NPT Review Conference (RevCon), “The CD hasn’t been able to demonstrate capacity to move forward, especially on FMCT. Thus, any recommendations here on fissile material shouldn’t be linked to the CD.” The idea found support among several European states, but most of the Non-Aligned Movement (NAM) states are opposed, arguing that the CD should not be undermined. The NPT nuclear-weapon states initially did not seem to approve of the proposal, but at the High-Level Meeting at the UN on 24 September 2010 (explained below), both the United Kingdom and the United States spoke favorably about possible options outside the CD. U.K. representative Alistair Burt, for example, stated that “the United Kingdom supports negotiating a fissile material treaty in a different venue if the CD remains deadlocked.”

A draft disarmament action plan tabled by the Chair of the Subsidiary Body 1 (disarmament) at the 2010 RevCon did contain an action item mandating that, in case of continued deadlock at the CD, the UN General Assembly should examine ways to proceed on negotiations. However, due to the opposition of the nuclear-weapon states (NWS) and several non-nuclear-weapon states (NNWS), the Final Document merely invited the UN Secretary-General to convene a high-level meeting to discuss overcoming CD paralysis. The meeting took place in New York on 24 September 2010, during the high-level segment of the General Assembly, but did not yield any significant actionable decisions. It ran for half a day and featured statements on the work of the CD and commencement of FMCT negotiations from most of the key states. Pakistan, however, remained silent.

It must be noted that while several states have spoken in support of taking the negotiations out of the CD, no concrete proposals on the modalities and venue of such negotiation have been tabled yet. The U.S. representative at the UN First Committee privately clarified that U.S. thinking at present does not go beyond conducting informal consultations among interested states. A more concrete proposal, one advocated (somewhat controversially) by CD Secretary-General Sergey Ordzhonikidze, is to change the rules of procedure at the CD to allow procedural decisions to be adopted by a majority vote rather than consensus. This would allow committees to be established and negotiations to begin without all of the CD members’ approval.

Country Positions

Views, approaches, and disagreements on the FMCT run across regional and ideological groupings. The five NWS recognized by the NPT all support, at least nominally, the negotiation of an FMCT but not the destruction of existing stocks, and Russia and China oppose taking the negotiation out of the Conference on Disarmament. Four NPT NWS – France, Russia, the United Kingdom, and the United States – have declared a moratorium on the production of fissile material for weapons purposes, but neither China nor the four non-NPT parties have taken this step.¹² At present, only

¹² North Korea previously agreed to dismantle its nuclear weapons program, but in October 2010 announced its decision to restore the cooling tower at the Yongbyon reactor, presumably with the goal of restarting the production of fissile material.

Pakistan openly opposes beginning negotiations on an FMCT, but Islamabad is also the only nuclear weapons possessor speaking firmly in support of including existing stocks in a future treaty.

The non-nuclear Non-Aligned Movement states and NAM observer states traditionally support a fissile material treaty, but many insist that it would make sense only if it addresses the destruction of current stocks of weapons-purpose fissile material. Egypt, Brazil,¹³ South Africa, and other leading NAM states have all repeatedly expressed support for this position. Furthermore, among the NAM, there is a perception that FMCT is a “Western” priority – more so than other issues on the CD agenda, such as nuclear disarmament. Some of the opposition to taking the negotiations out of the CD therefore stems from the concern that the Conference would be rendered irrelevant, and, unlike FMCT, other issues on the CD agenda, such as negative security assurances and nuclear disarmament, would not be addressed in any other negotiating forum. Note that the Final Document of the 15th NAM Summit, while acknowledging the adoption of the CD program of work in May 2009, makes no specific reference to a fissile material treaty.¹⁴

European states are divided on the question of extra-CD negotiations of a fissile material treaty. At the 2010 NPT Review Conference, in addition to France, Germany also expressed doubts about the Norwegian proposal to move beyond the CD. Norway itself did not press the issue at the 2010 session of the First Committee (disarmament and international security) of the UN General Assembly. At the same time, European disarmament advocates, such as Ireland, Norway, and Switzerland, agree that the future treaty should cover existing stocks.

Key States

France

France has shut down and dismantled two facilities that produced HEU and plutonium, respectively, and has in place a moratorium on production of fissile material for weapons purposes. However, France’s commitment to nuclear disarmament has repeatedly come under question in light of its reneging on the decisions of the 2000 NPT RevCon, which approved “13 steps” or practical measures toward this goal and more recently by offering a lukewarm response to President Obama’s vision of a nuclear-weapon-free world. At the 2010 RevCon, France frustrated disarmament advocates among the EU states (such as Ireland), the NAM and the non-governmental community with its position that conditions are not “ripe” for moving towards nuclear abolition and that a more “realistic” approach was needed. Paris supports the negotiation of a fissile material treaty that would ban the production of new material for weapons purposes, but not one covering existing stocks.¹⁵

At the 2010 RevCon, France also explicitly opposed taking the issue out of the CD. The French delegation did not clearly enunciate its reasoning for this opposition, beyond the insistence that the Conference on Disarmament should “be given a chance” to succeed. At the High-Level Meeting in September 2010, the French representative elaborated further, indicating that, while France is

¹³ Brazil is a NAM observer, rather than a member, but it is nonetheless very influential within the NAM grouping.

¹⁴ XV Summit of Heads of State and Government of the Non-Aligned Movement, Sharm el Sheikh, Egypt, 11-16 July 2009, <http://www.namegypt.org/en/RelevantDocuments/Pages/default.aspx>.

¹⁵ Discussed in Jean-Marie Collin, “France,” in *Banning the Production of Fissile Materials for Nuclear Weapons: Country Perspectives on the Challenges to a Fissile Material (Cutoff) Treaty*, Companion Volume to Global Fissile Material Report 2008, IPFM, p. 14.

frustrated with the CD deadlock, pursuing negotiations that do not involve all the key states would be destabilizing, allowing some states to continue producing fissile material.

Russia

Until 2003, motivated by concerns about U.S. missile defense plans and weaponization of space, Russia (together with China), linked the negotiation of an FMCT to negotiating a treaty on the prevention of an arms race in outer space (PAROS). Russia agreed, however, to drop this direct linkage and supported the adoption of CD/1864's program of work in May 2009. Russia has a moratorium on the production of fissile material for nuclear weapons, but does not support the destruction of existing stocks under the new treaty. At the 2010 Review Conference, the Russian delegation insisted that the CD should be given a chance to start negotiations, rather than taking the issue to another forum. Russia also opposes modifying the rules of procedure at the CD. Russian representative made this position clear at the High-Level Meeting in New York in September 2010: "Russia will not support proposals to revisit the rule of consensus in the work of the CD in order to increase its vitality because consensus is the only way to develop multilateral arms agreements. Russia believes that the CD should remain the leading international negotiating mechanism for a fissile material agreement."¹⁶

China

As mentioned above, China previously linked FMCT negotiations at the CD to PAROS, but along with Russia, changed its position in 2003. At the same time, broader linkages of arms control to strategic stability remain in China's thinking and rhetoric. In this respect, there are some doubts about the sincerity of China's support for an FMCT, considering that even with the recently unveiled new, less assertive U.S. space policy and U.S. openness to discussing arms control in space, the United States is not prepared to stand down on missile defense, an issue of critical importance to Beijing.

Writing for IPFM, Chinese arms control specialist Li Bin estimated that China, as of 2008, did not need to produce more fissile material to meet its needs to modify its arsenal to incorporate new land-based mobile launchers and submarine launched ballistic missiles (SLBMs).¹⁷ At the same time, China remains cautious about U.S. advances in missile defense and high-precision conventional assets and may perceive an eventual, future, need to counter the growing imbalance with an expansion of its nuclear arsenal, in which case it would need more fissile material.¹⁸ Thus, even though it is not believed to be currently producing fissile material for weapons, China is also the only NWS that has not declared a moratorium on its production. It continues the qualitative improvement of its missile arsenal and has registered a quantitative increase in the number of deployed nuclear warheads, although at a somewhat slower pace than might be expected. Given China's lack of transparency concerning its nuclear arsenal and fissile material production, the inclusion of existing stocks in the eventual negotiation would likely prove difficult for the country to accept. At the 2010 NPT RevCon, the Chinese delegation insisted on excluding any language on a fissile material production moratorium from the final document. China also insisted that the final

¹⁶ Sergey Ryabkov, Statement of the Russian Delegation to the High-level Meeting of the UN General Assembly, 24 September 2010, New York.

¹⁷ Li Bin, "China," in *Banning the Production of Fissile Materials for Nuclear Weapons: Country Perspectives*, p. 8.

¹⁸ *Ibid.*, p. 9.

document of the Review Conference specifically refer to the FMCT negotiations in the Conference on Disarmament, as Beijing does not support taking the negotiations out of this forum.

While at present China officially supports the negotiation of an FMCT, one may wonder if Pakistan, in opposing the commencement of negotiations, may, at least in part, be doing the bidding of its Chinese ally, possibly in exchange for a pending nuclear cooperation deal and other forms of support.

India

India is a nuclear weapons possessor outside the NPT and has not declared a moratorium on fissile material production for military purposes. Indeed, India is believed to be increasing its stocks and modernizing its arsenal. At the same time, India officially supports the negotiation of an FMCT at the Conference on Disarmament. In September 2008, addressing the Nuclear Suppliers Group (NSG) before the group's decision to end its moratorium on nuclear trade with India, Indian Minister of External Affairs Pranab Mukherjee said that his country was "committed to work with others towards the conclusion of a multilateral Fissile Material Cut-off Treaty in the Conference on Disarmament that is universal, non-discriminatory and verifiable."¹⁹ Even though India has long pronounced itself a champion of nuclear disarmament, its current nuclear doctrine – and the positions of the NPT NWS²⁰ – dictates its opposition to the inclusion of existing stocks in the scope of the treaty. Since it is not an NPT member, India does not take part in the deliberations at the PrepComs and RevCons, thus it did not need to react to Norway's and others' calls to take FMCT negotiations out of the deadlocked Conference. However, India's blocking of the draft Comprehensive Nuclear-Test-Ban Treaty (CTBT) at the CD in 1996 prompted the treaty to be taken to the General Assembly, suggesting that India would have little taste for alternative negotiating venues. Associating itself with the position of the NAM, India insists that the CD should be the sole negotiating body for an FMCT.

Israel

Israel, another NPT outlier, is widely believed to have nuclear weapons but has never admitted to its nuclear arsenal or the production of fissile material. Its policy of opacity means that Israel would be precluded from declaring a moratorium on producing fissile material for nuclear weapons, even if it wished to halt such production. While Israel remains fairly quiet on the subject of FMCT in the CD discussions, its support for the treaty is far from assured. In recent years, Israel has been arguing in the UN First Committee that pursuing an FMCT will not address existing problems with ensuring compliance with nonproliferation commitments, a clear reference to Iran.

Israel views an FMCT with suspicion. The leadership is concerned that such a treaty constitutes a "slippery slope" leading to "premature" nuclear disarmament, i.e., before a comprehensive peace has been established in the Middle East. In addition, Israel also strongly objects to a treaty that does not address Iran's nuclear capabilities, that is, the future production of fissile material for ostensibly

¹⁹ Statement to the plenary of the Nuclear Suppliers Group, 4-5 September 2008, available at <http://www.indianembassy.org/prdetail606/--%09--statement-by-external-affairs-minister-of-india-mr.-pranab-mukherjee-on-the-civil-nuclear-initiative>.

²⁰ As noted earlier, none of the NWS under the NPT is openly favorable to covering existing stocks under the FMCT.

peaceful purposes that could be rapidly made into nuclear weapons if Iran withdrew from the FMCT (and the NPT). Indeed, Israel perceives such a treaty as exacerbating its security concerns. Given the country's longstanding effort to maintain the opacity of its nuclear weapons program, moreover, the question of verification would be an extremely difficult one for Israel, should negotiations commence, and if the treaty covered existing stocks, the accord would be even more threatening to Israeli security interests and policy of opacity.²¹

In early August 1998, after the Indian and Pakistani nuclear tests, China, India and Pakistan joined the consensus in the CD on the FMCT. Israel was left as the last holdout, and its position became critical for the entire process at the CD. Clinton Administration then exerted intense pressure on the Israeli government to achieve a consensus. Israel's decision to stop blocking the CD, however, did not signify an agreement to negotiate an FMCT. Recognizing that an FMCT might have profound long-term implications for the future of Israel's nuclear policy, Prime Minister Benjamin Netanyahu, in two letters and several conversations with Bill Clinton, asserted: "We will never sign the treaty, and do not delude yourselves—no pressure will help. We will not sign the treaty because we will not commit suicide."²²

In the years since, because other states – Russia and China, United States, Pakistan – have been blocking the start of negotiations at the CD over the past decade, Israel found itself in a comfortable enough situation, where it was not pressed to take a clear and public position. Were the circumstances to change at this time or in the near future, Israel would likely find itself in greater difficulty with respect to an FMCT.

Israel did not block the adoption of the program of work at the CD in 2009, but it is evident that Jerusalem did not change its view on an FMCT. It is, however, politically convenient for Israel to keep a low profile and "hide" its own reservations behind Pakistan's active opposition. In 2009, the Israeli representative did not comment supportively or otherwise on the adoption of the CD's program of work that included the establishment of a working group to negotiate an FMCT, but a week before that indicated that his delegation was not properly consulted by the CD President.²³ Since, as noted, Israel is outside the NPT and its review process, it also did not take part in the discussion on taking FMCT negotiations out of the CD during the 2010 RevCon and the 2009 PrepCom.

Israel's statement at the High-Level Meeting in New York on September 24 was very brief and did not address the FMCT issue at all, nor did the Israeli representative voice any opinion on changing the rules of procedure at the CD or on any other alternative option. It is apparent that Israel, unwilling to support an FMCT, also remains comfortable with letting another state openly block its negotiation.

²¹ For details on the Israeli position see Avner Cohen and Marvin Miller, "Israel," in *Country Perspectives on the Challenges to a Fissile Material (Cutoff) Treaty*, International Panel on Fissile Material, 2008, 27-33.

²² Aluf Benn, "The Struggle to Keep Nuclear Capabilities secret," *Ha'aretz*, 14 September 1999.

²³ Representative of Israel to the Conference on Disarmament, statement on record, 22 May 2009, available at www.reachingcriticalwill.org

Pakistan

Pakistan, also a nuclear weapons possessor outside the NPT, has not declared a fissile material production moratorium; indeed, it is expanding its fissile material production capability (some assume with the assistance of China) and is widely seen as being on a quest for strategic parity with India. At present, Pakistan is seen as the main stumbling block to FMCT negotiations, as it is the only state officially and publicly opposed to their commencement. Unlike other nuclear weapons possessors, however, Pakistan, as noted, insists that any future fissile material treaty should include existing stocks. Otherwise, it argues, the new treaty would simply freeze the current situation and inequality, putting Pakistan at a permanent disadvantage compared to India. This concern was exacerbated by the 2005 U.S.-India nuclear deal and subsequent adoption in the NSG of an exemption for India in 2008 from the group's ban of nuclear trade with states outside the NPT. Even though currently Pakistan's existing stocks of fissile material roughly match India's, the latter could presumably devote more of its resources to future production, while importing material for the peaceful part of its nuclear program. Pakistan did not block the adoption of the CD program of work in May 2009, but made clear its understanding of what negotiations should cover. Ambassador Zamir Akram enunciated Pakistan's position at the CD in May 2009: "The issues of verification and stocks have become vital for Pakistan in any negotiations on a FMT because of the nuclear cooperation arrangements in our neighborhood, without adequate international safeguards."²⁴ However, more pertinent than the "practical" issue of fissile material production is the perceived worsening of Pakistan's international standing compared to India's as a result of the nuclear deal. A question of status, this concern is much harder to address than the parity in arsenals and fissile material.

In February 2010, Pakistan reiterated its position at the CD and underscored that an FMCT prohibiting future production would target Pakistan, specifically, because India and Israel "have special dispensations and arrangements" that would allow them to protect their nuclear weapons programs.

It is not entirely clear why Pakistan went along with the adoption of the CD program of work in 2009, considering that the inclusion of stocks in the negotiations was not likely at the time. One may suppose that Pakistan was expecting a reciprocal gesture of some kind from the United States, although it is again unclear what Pakistan was hoping to receive and, in particular, whether it was seriously counting on a nuclear deal analogous to India's in the near future. Note that a week before the adoption of the program of work, U.S. Secretary of State Hillary Clinton assured the U.S. Congress that any foreign or military aid provided to Pakistan would not serve to boost its nuclear capability. Speaking at the hearings on the Kerry-Lugar aid package for Pakistan, she said, "We are very clear, very firm and quite convinced that none of our aid will in any way affect the efforts of Pakistan regarding their nuclear stockpile."²⁵

One question for the United States is whether Pakistan still expects to be offered a bargain in return for support of an FMCT, and whether an offer short of a peaceful nuclear cooperation deal would suffice. Considering that U.S. aid to Pakistan was tripled in 2009, and was still further increased in

²⁴ Ambassador Zamir Akram, Statement at the Conference on Disarmament, 29 May 2009, available at http://www.reachingcriticalwill.org/political/cd/speeches09/2session/29may_pakistan.html

²⁵ Quoted in "U.S. Aid Would Not Fund Pakistani Nuclear Buildup, Clinton Says," *Global Security Newswire*, May 21, 2009, at http://gsn.nti.org/gsn/nw_20090521_6731.php

2010 because of the country's devastating floods, it would be difficult to argue before the U.S. Congress for another increase, especially if cooperation on countering Taliban does not yield significant results in the near future.

It is also not clear that Pakistan wants a "bargain," at least not a bargain that the United States is in a position to provide. Pakistan's representative to the CD indicated that the country's opposition to FMCT is strategically motivated and that this position is based on an assessment by Pakistan's Chief of Army Staff. Given that the NSG exception was granted to India in exchange for fairly limited commitments in relation to nuclear testing and fissile material production, and that there is no going back on the deal with India, it is unlikely that Pakistan's perception of unequal treatment and enhanced vulnerability will dissipate any time soon.

Addressing Pakistan's strategic concerns would be essential but difficult. If including existing stocks in the scope of the treaty is indeed what it takes to persuade Pakistan to negotiate, then breaking the deadlock would require a change not only in the U.S. position, but also in that of the remaining nuclear armed states, which is highly unlikely.

Conclusion

A treaty banning the production of fissile material for weapons purposes is one of the longest-standing aspirations of the nonproliferation and disarmament community. It is widely believed that conditions are ripe for the negotiations of this treaty, but the Conference on Disarmament has been for years unable to begin negotiating it. Perhaps swept up in the positive momentum of spring 2009, including President Obama's Prague speech or expecting a reciprocal benefit, Pakistan went along with the adoption of a program of work at the CD but subsequently blocked the negotiations. Pakistan's position appears to be motivated by a perception that a fissile material cut-off is essentially targeted against it, in particular, and that a treaty that does not address existing stocks would freeze the current situation of strategic inequality. Furthermore, Pakistan believes it is being treated unfairly compared to India in terms of status and recognition, which makes it even more difficult to influence Islamabad's position on an FMCT. Pakistan could, presumably, stop blocking the beginning of the negotiations, with a view to raising the issue of stocks during the talks and at the same time exposing other states who are quietly opposed to a fissile material treaty. It seems, however, that Pakistan is either concerned that, once started, the negotiations momentum will overtake it, or is simply trying to assert its own status through the ability to block the CD.

Numerous statements in support of, and calls to begin the negotiations of, an FMCT belie the existing diversity of views and disagreements, especially about the scope of the treaty. Furthermore, some countries that nominally or rhetorically are in favor of the treaty, or are at least quiet about it, may, in fact, be very comfortable with Pakistan blocking the negotiations. These countries include India, Israel, and China. Although at present the focus remains on Pakistan, looking ahead, U.S. policy makers should also clarify Israel's stance on a fissile material treaty and consider what – if any – options are available to address the opposition. Furthermore, while different states – United States included – have broadly spoken in favor of finding an alternative to negotiating an FMCT at the Conference on Disarmament, there is no agreement on what this alternative should be, nor are there at present any more specific proposals under consideration.

Further questions to consider

In light of the above discussion, there are several areas for further examination in relation to FMCT options.

CD and Alternatives

Existing opinions regarding taking the negotiations out of the CD, specific proposals on venues and modalities, and key states' positions on such or potential proposals warrant further examination. While the United States so far envisions only informal consultations outside the plenary and committees, other states might argue for establishing a formal committee under the UN General Assembly or creating an altogether separate process. Several precedents can be considered in this respect: the Ottawa process that led to the conclusion of the Anti-Personnel Mine Ban Treaty, the negotiations of the Cluster Munitions Convention, and the Arms Trade Treaty process carried out under the General Assembly mandate.

It is unclear how much the states that generally speak in favor of extra-CD action are prepared and willing to actively pursue such options rather than investing time and effort into other issues (e.g. nuclear disarmament). More in-depth discussions with relevant states' officials are needed to better assess key countries' priorities and intentions.

Expanding the scope

While the FMCT as currently envisioned is essentially relevant only for nuclear weapons possessors, a proposal by the Washington-based Center for Strategic and International Studies envisages a voluntary multilateral arrangement to deal with fissile material more broadly, regardless of whether it is for military or peaceful purposes.²⁶ This Fissile Material Control Initiative (FMCI) would cover stocks in both nuclear and non-nuclear-weapon states, NPT and non-NPT members, and safeguarded by the IAEA and unsafeguarded. FMCI would involve increasing "security, transparency, and control over fissile material stocks worldwide,"²⁷ placing non-military and excess military fissile material under international safeguards, and transforming excess fissile material into a form that renders it unusable for nuclear weapons.

No broad-based international discussion of FMCI has taken place yet, but with no progress on FMCT, it may be worthwhile to explore potential or actual reactions of key states to such a proposal, and what prospects the initiatives has in terms of implementation.

²⁶ Robert J. Einhorn, "Controlling Fissile Materials and Ending Nuclear Testing," Achieving the Vision of a World Free of Nuclear Weapons, International Conference on Nuclear Disarmament, Oslo, 26-27 February, 2008, http://www.ctbto.org/fileadmin/user_upload/pdf/External_Reports/paper-einhorn.pdf. Robert Einhorn is currently Special Advisor for Nonproliferation and Arms Control at the U.S. Department of State.

²⁷ Ibid.